March 17, 1932
10c a Copy

Volume 7, Number 7
$1 Per Year

THE LOS ANGELES BAR ASSOCIATION

BULLETIN

Official Publication of the Los Angeles Bar Association, Los Angeles, California

THE NEW PLEBISCITE METHOD

AMENDMENT OF THE BY-LAWS

NEW OFFICERS INSTALLED

OLD AND NEW APPROACH IN CRIMINOLOGY

THE JUNIOR BAR COMMITTEE

ARBITRATION COMMITTEE REPORT

THE COUNTY LAW LIBRARY

MONTHLY MEETING OF MEMBERS

THURSDAY, MARCH 31, AT 6:00 P.M., ALEXANDRIA HOTEL

Speaker, DR. CHARLES K. EDMUNDS, President of Pomona College.

Subject: "THE SITUATION IN CHINA."

Music by Pomona College Men's Glee Club.

Dr. Edmunds spent many years in China as observer in charge of the Magnetic Survey of China for the Carnegie Institute at Washington.

Printed by PARKER, STONE & BAIRD COMPANY
Law Printers and Engravers
241 East Fourth Street Los Angeles, California

The New Plebiscite Method

By John Perry Wood of the Los Angeles Bar and Member of the Board of Governors of the State Bar.

Whatever our system of law, the administration, accurately and expeditiously, of real justice, depends in the last analysis upon the ability, highmindedness, sense of justice and capacity for work of the individual judge. In a word, justice depends upon the judge. If the administration of justice is to be materially improved the average of judicial capacity must be raised. The body of the judges must be up to the average of the best judges. The bar owes to the public and to itself the duty of doing all in its power to enable election to judicial office of the very best men obtainable.

The new plebiscite method is designed to enable the bar to perform this duty better than it has in the past. The plan enables a scientific and correct determination by the bar of the qualifications of judicial candidates. It provides first that each candidate, in response to a questionnaire to him, shall set forth the facts which bear upon his educational qualifications, his training and experience. The candidate is not permitted, as heretofore, to write merely a laudatory or general statement about himself. The questionnaire calls for specific answers to specific questions. From the responses made the committee makes up a statement of the educational qualifications, training and experience of each candidate. This will clearly identify each candidate and furnish some preliminary information respecting him. This statement then goes to each member of the bar association and its affiliated associations, together with a questionnaire which calls for specific answers to specific questions designed to disclose correctly and fully the knowledge of each lawyer as to the qualifications of each candidate. The questionnaire enables and calls for information in addition to that called for by the questions, which the lawyer from his knowledge of each candidate may be able to supply. From the returns to this questionnaire the committee makes up a statement setting forth the qualifications of each candidate and makes its recommendation respecting him. This statement and recommendation is not based upon the personal knowledge of the members of the committee, but upon the information supplied by the lawyers in response to the questionnaire. The method is therefore a democratic method and is calculated to enable a full and accurate determination of the judicial availability of each candidate. The statement will reflect the consolidated knowledge, judgment and wisdom of the members of the bar association and all its affiliated associations as to each candidate. It should be a clear, composite photograph of each candidate made by the cameras of all the lawyers' knowledge of and experience with each candidate.

Vote of Members

Only after the information has been thus obtained and collected is the bar called upon finally to vote upon the candidates. Obviously, the lawyers can then vote with infinitely better intelligence than under the old method which called for a vote approving or disapproving each candidate, but without adequate knowledge. The necessity for such information before the final plebiscite has been well demonstrated by the fact that in the past many candidates have presented themselves, about whom most of the members of the bar have known little. Under the new method even if a candidate is known to but few lawyers, those lawyers will express their knowledge of him. If only fifty lawyers know the candidate and his qualifications well enough to answer the questionnaire and their answers are all, or nearly all, favorable, the report of the committee will so show and the bar can with reasonable safety approve such candidate. If, on the contrary, only a few lawyers know a candidate and most of them by their answers show him not to be qualified, the bar can safely disapprove him.

Result is up to the Bar

The result of the new method adopted by the bar will depend upon each lawyer fully and frankly answering each question submitted in the questionnaire to the bar. If each lawyer will do his duty in answering the questionnaire, then the bar when it votes, approving or disapproving each candidate, will be able to express a judgment upon which the public may with safety rely. There is no other group or body that can be looked to by the public with confidence for disinterested judgment and advice. The

Los Angeles Bar Association Bulletin

VOL. 7 MARCH 17, 1932 No. 7

Official Publication of the Los Angeles Bar Association. Published the third Thursday of each month. Entered as second class matter August 8, 1930, at the Postoffice at Los Angeles, Calif., under the Act of March 3, 1879.

CONGESTION IN OUR COURTS

President Walker of Bar Association for 1931, Leaves a Parting Message With Members

Fellow Members:

The mantle of the presidency of the Bar Association has slipped from my shoulders and is now draping itself gracefully about the broad and capable shoulders of Bob Jennings. Thanks to the earnest efforts of the trustees and the members of the Association, much constructive work has been done during the past year. It is not my intention to review that work in this letter. I do, however, wish to leave with you one thought that has been pressing upon my attention during this period when my efforts have been centered on the activities of the Bar Association.

We have all heard the increasing outcry against congestion in our courts. We have heard this congestion charged to defects in our laws, to the inefficiency of judges and to the dilatory practices of the lawyers. While insisting that there are many excellent judges and many lawyers whose conduct of litigation is beyond reproach, I shall concede that there are procedural defects, inefficient judges and counsel who indulge in practises that merit criticism. In fact, I seek to emphasize the point that most of the proper criticism of the courts and of the administration of justice arises out of the circumstance that there are inefficient judges and lawyers who do not measure up to the best standards of their profession.

If all members of the legal profession were high-minded, fair and well-trained for their work, we would have learned and conscientious judges. It could hardly be otherwise since the judges are selected from among the members of the bar. If our lawsuits were tried before conscientious and learned judges by skilful and ethical advocates, the business of the courts could and would be expedited to a point where we would no longer hear of congestion, and this would be true despite any procedural defects. If, moreover, lawyers were thoroughly trained and altogether fair in their professional dealings, many lawsuits would never be filed and many of those filed would not be defended.

The problem to my mind is largely one of personnel, and the solution is to be found in a more careful selection of those admitted to practise law. Although we like to think of this as a democratic country, I should like to see an aristocratic bar—an aristocracy based on learning, skill, courtesy and fine feeling. It is no service to the commonwealth and no kindness to the individual to license a person to practise a profession for which he is not suited. I am not suggesting that every applicant for admission to the bar should have completed any specific number of years of study or should have been born to the purple. I am merely saying that before a man becomes a lawyer it should be ascertained that he has sufficient learning, an aptitude for the work he means to do, and a character to back up his learning and ability. Just what method must be adopted to accomplish these results is a matter requiring a great deal of earnest thought. The problem is not a new one but I again recommend it to the attention of the bar with the assurance that, if it can be solved, it will mean that a long step forward has been taken and that we shall be well on the way to relieve both the bench and the bar from those criticisms that are now much too wide-spread and much too often justified.

Respectfully yours,
IRVING M. WALKER.

public must either accept the judgment of the bar and support that judgment, or judges will continue to be elected through the efforts of persons or interest selfishly inclined or by personal expenditure of efforts and money by candidates and their friends. Judicial office should not go to him who is the best hand-shaker, or who toots his horn the loudest or the most continuously. Nor should it go to him whose main qualification is a flair for publicity or politics. Judicial office should not be bought by the money of individuals or of selfish interests. The bar alone, which ardently wishes only upright and competent judges, can perform the necessary task under present methods of judicial selection of determining and advising on the fitness of candidates for judicial office. It is manifestly up to the bar.

Amendment of By-Laws

ADOPTED AT JANUARY MEETING OF MEMBERS OF BAR ASSOCIATION CONCERNING JUDICIAL CANDIDATES AND ELECTION

In January, 1931, the President appointed a committee of five to examine into the methods used here and elsewhere for obtaining the judgment of members of the bar on Judicial candidates, and conducting campaigns in favor of those who are approved by the bar. The Committee proposed an amendment of the By-Laws, which proposed amendment, after due notice to members, was considered at the meeting held on January 21, 1932. Certain amendments to the Committee's form of the amendment were made.

THE BULLETIN prints below the amendment as finally adopted at the January meeting.

ARTICLE IX

Concerning Judicial Candidates and Election

Section 1. A standing Committee on Judical Candidates and Campaigns shall be created. It shall be composed of fifteen representative lawyers of recognized standing, judgment and independence; one-third to be appointed for two years, one-third for four years, and one-third for six years. The Committee shall be kept filled by biennial appointment of five. All vacancies shall be filled as they occur. The Committee shall be appointed and all vacancies therein shall be filled by an Appointing Board composed of the president of the Association, the ten past presidents next in order who reside and practice law in the County of Los Angeles, and the presidents of the Affiliated Associations as defined by Article VI of the By-Laws. The Appointing Board shall meet at the call of the president, or of any three members.

The committee shall have the following powers and duties:

(1) To inform itself of prospective candidates, and the qualification of candidates, for the Superior Court of Los Angeles County, and the Municipal Court of the City of Los Angeles.

(2) To induce lawyers qualified for these judicial offices to become candidates therefor;

(3) As soon as the list of candidates for any election for any of the judicial offices mentioned shall have been determined by the filing of petitions or otherwise as the law may require, then;

(a) To request from each candidate a biographical statement and a statement whether he will submit his candidacy to a plebiscite to be taken by the Los Angeles Bar Association. Such statements shall be in response to a questionnaire substantially in the form shown by Exhibit "A" to this Article IX.

(b) To verify, where in its judgment such verification is desirable, the statement of the candidate.

(c) To transmit to each member of the Los Angeles Bar Association the substance of the said statement, with, if the facts do not tally with the candidate's statement, a statement of the facts found upon verification. If the candidate fails to furnish the biographical statement or to submit his candidacy to the plebiscite, the Committee shall ascertain the facts as to his biography and qualifications and if the candidate be found by the Committee not qualified for the office, report such facts and findings in said statement.

(d) With such statement to transmit a questionnaire as to every candidate, substantially in the form shown on Exhibit "B" to this Article IX, including a letter of transmittal substantially in the form of Exhibit "C" thereto.

(e) To cause the answers to the questionnaires to be tabulated by a reputable firm of public accountants, to consider such tabulation, the questionnaires and the comments appearing on the questionnaires or in accompanying letters, and from them make up a statement of the qualifications of each candidate showing the reasons therefor in brief or in extenso as the Committee may determine, and determine which candidates should be recommended and which candidates should not be recommended. If any candidate has declined to submit himself to the plebiscite or to submit his biographical information, that fact shall be stated and he shall not be recommended by the Committee and his name shall not appear on the ballot —but if the candidate be found not qualified for the office the Committee in its discretion may so report in its statement—in its discretion setting forth the basis therefor in brief or in extenso.

(f) To transmit to each member of the Los Angeles Bar Association said statement of the candidate's qualifications together with the recommendations of the Committee, showing also the total number of questionnaires answered and that the facts and recommendations are based upon the answers to and remarks upon the questionnaires.

(g) With such statement and information to transmit a ballot for voting upon one candidate for each office to be filled.

(h) To count the ballots and report the result to the Board of Trustees and make the result public.

(4) To cause an active and widespread campaign in behalf of the candidates who receive the highest vote at the plebiscite for the offices for which they respectively are candidates; to take complete charge of the raising of money to conduct such campaign; and for such purposes at its discretion to appoint sub-committees of its own members or partly of its own members and partly of other lawyers and/or laymen.

Section 2. Whenever by this Article IX provision is made for transmission to the members of the Association of statements, questionnaires, ballots or other papers connected with the subject matter of this article, such statements, questionnaires or ballots shall be transmitted similarly to the members of each affiliated Bar Association who are not members of this Association, and the statements, questionnaires and ballots of such members of said affiliated associations shall be received, canvassed, tabulated and acted upon in like manner as those received from members of this Association, to the end that the plebiscite provided for by this Article may be the plebiscite of all lawyers who are members of this Association and/or of all other bar associations in the County of Los Angeles which are affiliated with this Association.

Section 3. If directed by the Board of Trustees so to do, the Committee shall have and perform, in respect of the election particularly designated by said Board, the same powers and duties in respect of candidates for and election to the office of judge of the District Court of Appeals for the district in which Los Angeles is situated, and/or judge of the Supreme Court, herein given to the Committee in respect of candidates for and election to the office of judge of the Superior Court for Los Angeles County.

Proposed Form of Questionnaire for Candidates

EXHIBIT "A"

To ....., candidate for ..... Court:

To enable the Committee on Judicial Candidates and Campaigns of the Los Angeles Bar Association to prepare its statement to accompany the questionnaire provided by the By-Laws for transmission to the members of the Association and affiliated associations, kindly answer the following questions, sign the questionnaire and return it to the Committee, using the enclosed envelope, not later than .....

.....

If the questionnaire is not answered fully or if the candidate does not answer question 10 in the affirmative, his name will not appear on the plebiscite ballot and he cannot be recommended. However, it will be the duty of the Committee to ascertain the facts as to the candidate's biography and qualifications, and if the candidate be found not qualified, to report such fact in its statement to the bar accompanying the questionnaire. At all events the name of each candidate will be submitted in the questionnaire. If therefrom the candidate be found not

qualified that fact will be reported in the statement sent out with the plebiscite ballot, although such candidate's name will not appear on the ballot. It is desirable, therefore, that each qualified candidate submit his candidacy to the plebiscite and respond fully to the questionnaire.

(1) Name and office address.

(2) When and where born.

(3) From what schools graduated with the place, year and number of years attended:
  (a) High school.
  (b) Other preparatory schools.
  (c) College.
  (d) Law school.
  (e) Other education.

(4) When and where admitted to the Bar?

(5) When admitted to practice in California?

(6) The places of practice and the number of years of practice in each place.

(7) Number of years and character of active trial experience and where?

(8) Have you ever been disbarred or suspended from the practice of law? If so, when and where and under what circumstances?

(9) Judicial experience, if any, giving court and period of service.

(10) Other public office held, where and how long?

(11) Will you submit your candidacy to the plebiscite to be taken by the Los Angeles Bar Association?

EXHIBIT "C"

(Form of Letter for Attachment to Questionnaire)

(HEADING OF LOS ANGELES BAR ASSOCIATION WITH NAMES OF COMMITTEE ON JUDICIAL CANDIDATES AND CAMPAIGNS)

Los Angeles, California.

....., 19.....

To the Members of the
Los Angeles Bar Association.

This letter deserves your careful and immediate attention.

Attached is a questionnaire submitted to all lawyers who are members of the Los Angeles Bar Association, or its affiliated associations, for the frank expression of their views as to the qualifications of all candidates for judge of ..... Court. Your answers are for the confidential guidance of the Committee on Judicial Candidates and Campaigns which will, on the basis of the answers to the questionnaire, including the comments thereon or accompanying them, recommend to the members of the Los Angeles Bar Association the candidates who in the judgment of the Committee, are qualified for the judicial offices they seek. In order to obtain a full and satisfactory judgment in this regard, it is necessary that all members return the questionnaire properly answered. Lawyers are urged to state any facts known to them bearing upon the candidates' qualifications.

The recommendation will be submitted to you in connection with the usual Bar poll, which will be held shortly. The purpose of the questionnaire is to procure as much accuracy as possible in the judgment of our Association and its affiliated associations on the qualifications of candidates to the end that a more vigorous judgment may be expressed and a sharper cleavage defined between the qualified and the unqualified.

Please return the questionnaire not later than ..... **Separate comment on the individual candidates may be written on or enclosed with the questionnaire.**

Please sign your name on the envelope with space provided for signature. In it enclose the other envelope with the questionnaire sealed in the inside envelope. Any member may sign the questionnaire if he desire. It is not necessary that he do so. Unless the questionnaire be signed it will be impossible even for a member of the committee to know who returned it. Whether signed or not all the questionnaires returned are guarded by absolute secrecy.

Very truly yours,

.....
Chairman of the Committee

and .....
Secretary of the Committee.

Proposed Form of Questionnaire for Members of the Bar Association

EXHIBIT "B"

(Questionnaire must be in the hands of the Committee not later than.....at.....m.)

QUESTIONNAIRE CONCERNING CANDIDATES FOR NOMINATION FOR JUDGES OF THE ..... COURT AT THE ELECTION OF NOVEMBER ....., 19.....

Special information and comments concerning any of the candidates may be noted on the back hereof or by separate enclosure. Such information and comments and the answers to this questionnaire are for the confidential information of the Committee in determining its recommendations for the later plebiscite and will not be disclosed to others. Members are not required to sign the questionnaire, but may if they desire.

The following questions are submitted as to each candidate who has not held judicial office.

	CANDIDATES WHO HAVE NOT HELD JUDICIAL OFFICE					
	John Doe		Jim Roe		James Coe	
	Yes	No	Yes	No	Yes	No
1. Have you had personal contact with him professionally or socially?						
2. Does he possess adequate legal ability?						
3. Has he a judicial temperament?						
4. Will he be diligent in the dispatch of business?						
5. Is he disposed to work hard?						
6. Has he executive capacity?						
7. Has he a sense of civic responsibility?						
8. Has he had adequate experience in the trial of lawsuits?						
9. Is his reputation at the Bar good?						
10. Has he the integrity to be a good judge?						
11. Has he the capacity to be a good judge?						

The following questions are submitted as to each candidate who has held judicial office:

	CANDIDATES WHO HAVE HELD JUDICIAL OFFICE IN CALIFORNIA					
	John Doe		Jim Roe		James Coe	
	Yes	No	Yes	No	Yes	No
1. Have you appeared in his court?						
2. Does he open court promptly?						
3. Does he remain on the bench until 5 o'clock if a case is in his court in course of trial?						
4. Is he diligent in the dispatch of business?						
5. Is he disposed to work hard?						
6. Is he courteous?						
7. Is he attentive and fairminded?						
8. Does he possess adequate legal ability?						
9. Has he executive capacity?						
10. Is he able to rule and decide promptly?						
11. Is he disposed to rule and decide promptly?						
12. Does he allow politics or personal considerations to interfere with the proper discharge of his judicial duties?						
13. Does he indulge in extra-judicial controversies not proper for a judge, or which interfere with the proper discharge of his judicial duties, or which bring the judicial office into disrepute?						
14. Have you confidence in his judicial integrity?						
15. Has he a sense of civic responsibility?						
16. Do you regard him as an able judge?						

STANDING COMMITTEE ON JUDICIAL CANDIDATES AND CAMPAIGNS

CANDIDATES AND CAMPAIGNS
Wm. J. Hunsaker
Louis W. Myers
Leonard B. Slosson
Joseph P. Loeb
Alfred L. Bartlett
Jefferson P. Chandler
Byron C. Hanna
E. D. Lyman
J. Perry Wood
Frank G. Finlayson
Edna C. Plummer
J. W. Morin
W. Turney Fox
Ralph H. Clock
Walter F. Dunn

The committee, at a meeting held on March 12th, organized as follows:

EXECUTIVE COMMITTEE
William J. Hunsaker, *Chairman*
J. Perry Wood
Louis W. Myers
Byron C. Hanna
E. D. Lyman
A. L. Bartlett

The terms for which the respective members of the Committee will serve are as follows:

Two year term:

Louis W. Myers
Joseph P. Loeb
Byron C. Hanna
Edna C. Plummer
W. Turney Fox

Four year term:

W. J. Hunsaker
A. L. Bartlett
Jefferson P. Chandler
J. Perry Wood
J. W. Morrin

Six year term:

Leonard B. Slosson
E. D. Lyman
Frank G. Finlayson
Ralph H. Clock
Walter F. Dunn

STATEMENT AUTHORIZED BY BOARD OF TRUSTEES OF LOS ANGELES BAR ASSOCIATION

The Board of Trustees of Los Angeles Bar Association understands that some of the Superior Court Judges who will be candidates for re-election, and certain other persons who will be candidates for election to the Superior Court, are directly or indirectly soliciting contributions to their individual campaign funds from various members of this Association. The Association has neither the right nor the power to control its members in the matter of making such contributions, However, the Board of Trustees believes that it is proper to direct attention of its membership to the fact that a contribution to a candidate's campaign fund is in effect an endorsement of that candidate, and if made at this time is an endorsement before the Bar Association plebiscite has been taken. While such a prior endorsement is in no way prohibited, it is certainly inconsistent with the theory and purpose of the plebiscite.

The Board of Trustees also directs attention to the fact that the Association will conduct a campaign in behalf of the candidates endorsed by the Association, that funds will be needed for the conduct of that campaign, and that the Association expects to obtain such funds from the members of the Association.

The Public and the Bar

STATE BAR MOVEMENT TO SPREAD INFORMATION ON THE FUNCTION OF THE LEGAL PROFESSION

By Arnold Praeger, Chairman of Statewide Committee of Fifteen of the State Bar, Member of Los Angeles Bar

The Statewide Committee of Fifteen of The State Bar of California, appointed by the Board of Governors to inform the public concerning the functions of the legal profession, seeks the aid of all lawyers in the state in its effort to maintain and increase the respect of the public for the Bar. The broad base of this endeavor rests squarely on every one of the twelve thousand attorneys in California.

Very little, if any, benefit can be expected to result from the activities of the Committee until more lawyers realize that they are an integral part of The State Bar and are individually responsible for the reputation and welfare of the profession.

In an article appearing in a recent issue of the American Bar Association Journal and quoted in the February "BULLETIN," it is suggested that the Bar is becoming a guild. Nothing better could happen. In the guilds of old there was pride in membership, a camaraderie and pride in honest craftsmanship. It is desirable to bring about such a condition in our own profession. I will go further and say that it would be well if a feeling akin to an esprit de corps could be developed. There is sound reason for this. We are or should be educated, generally, beyond ordinary requirements. We are required to attain a certain standard of legal education before admission to practice. Practically every human problem is laid before us for solution. The leaders in government, finance and industry are recruited, very largely, from our profession. Some of the most notable figures in history were lawyers. There is occasion for pride of membership in such a guild. There is, however, room for improvement, and self praise and resounding phrases will accomplish nothing.

Working for Improvement

The American Bar Association, the American Law Institute, the American Judicature Society, our own State Bar and many Bar Associations, both local and in other states, are earnestly working for improvement in the administration of justice, better laws, higher educational requirements for applicants for admission to practice, for closer observance of the Canons of Ethics, the establishment of legal aid clinics for the assistance of the indigent, the suppression of the illegal practice of the law, and many other things of direct benefit to the public. Practically no publicity is given to these activities, except in legal journals. The public should be informed of what is being done in these respects, and that hundreds of lawyers throughout the country are giving largely of their time in an earnest endeavor to further these objects.

The Statewide Committee of Fifteen is of the opinion that one of the best means by which we can inform the public concerning the functions of the legal profession and of the great work that is being done, the results of which will be of benefit to it, is through the medium of able speakers who are of high standing at the Bar.

The Committee is engaged, with the cooperation of local Bar Associations and through subcommittees, in establishing speakers' bureaus throughout the State. It is its purpose to seek the opportunity of presenting speakers as representatives of the State Bar and cooperating associations, to all types of gatherings, and in this way inform the public what the profession is doing in the performance of what it considers to be its civic duty.

Speakers Wanted

The Committee would appreciate it if those who are willing to give their time earnestly in the preparation and delivery of addresses would signify their willingness to speak as a representative of The State Bar by registering with it.

The plans of the Committee contemplate that in time to come additional means of contacting the public will be employed.

While our profession of necessity is composed of individualists, still the common aim of all for the advancement of our profession should be the same. Many will say that in a profession largely composed of cynics, and our profession, (it must be admitted, tends to develop cynicism), nothing can be accomplished. Perhaps this is partly true. Nevertheless, the effort should be made, and through the coordinated endeavor of the entire Bar in the furtherance of a well designed plan, good results, in time, are bound to follow.

New Officers Installed

PRESIDENT JENNINGS AND NEW BOARD OF TRUSTEES TAKE OFFICE AT FEBRUARY MEETING. BANKER ADDRESSES LAWYERS

The Presidency of the Bar Association was surrendered to Robert P. Jennings by Irving M. Walker at the February meeting, held at the Alexandria Hotel, and the new Board of Trustees were presented to the members. Former President Norman A. Bailie presided. The attendance was about 250.

Mr. Walker in a brief but happy speech presented President Jennings with a new gavel, appropriately inscribed, and in accepting the emblem of office, President Jennings took occasion to speak forcefully upon the amendment to the By-Laws, recently adopted by the members, concerning Judicial Candidates and Elections. He said, in part:

"There was one accomplishment of the Los Angeles Bar Association during the past year which I think stands out conspicuously. I refer to the labors of the Committee so ably headed by Honorable John Perry Wood, which resulted in the framing and at the last meeting of the Association in the adoption of the new by-law concerning the plebiscite on judicial candidates.

"The popular election of judges is generally regarded among the thoughtful students of judicial affairs as the greatest single evil in our judicial system. It is not difficult to find many reasons why this is so. The theory underlying the popular election of public servants is that they should be subservient to popular will and public whim. On the other hand, a judge should be uninfluenced by anything except the facts of the case before him and the law applicable thereto. He should not be put in the position of the ordinary politician seeking public favor by pre-election campaigns and the promises and obligations which naturally flow therefrom. In California, however, we are faced with this condition. The popular election of judges is a part of our judicial system. After many years it has not been changed. Possibly it can never be. Therefore, it is highly desirable that there should be some reliable means of informing the voters regarding the candidates for judicial office so that the best candidates may be placed upon the Bench and good judges may be kept there. In the past, the plebiscite of the Los Angeles Bar Association taken among its members has served a worthy purpose in this behalf, but I feel that the new method afforded by the new by-law, under which the members of the Bar in their plebiscite will vote with far more information than heretofore and therefore more understandingly, will come to be recognized as furnishing the information and guidance which the voters require in judicial elections, and that it is not too much confidently to expect that the time will come when approval of a candidate in the Bar Association plebiscite will be regarded as a stamp of quality and this will do much to take away the stigma which attaches to the popular election of judges."

The guest speaker of the evening was James R. Page, President of the California Bank, Los Angeles. His subject was "The Flow and Ebb of Financial Depressions in the United States." Mr. Page, in a carefully prepared paper, recited the history of financial depressions and their causes from 1837 down to 1929. He believes the causes which brought about the present depression were: Excessive prosperity, over-extension of productive capacity, investment of fixed capital in unproductive enterprises, unsound expansion of credit, insufficient currency or contraction of credit, and obsolescene of law.

The New Board

The new officers and Board of Trustees for 1932, is as follows: Robert P. Jennings, President; Lawrence L. Larrabee, Senior Vice-President; W. H. Anderson, Junior Vice-President; Loyd Wright, Secretary; T. W. Robinson, Treasurer; J. L. Elkins, Executive Secretary. The Trustees: W. H. Anderson, Joe Crider, Jr., Earle M. Daniels, William Hazlett, Raymond L. Haight, Robert P. Jennings, Lawrence L. Larrabee, Harry J. McClean, Allen P. Nichols, T. W. Robinson, Clyde C. Shoemaker, Raymond G. Thompson, Stephen H. Underwood, Loyd Wright, J. Marion Wright.

The Old and the New Approach in Criminology

By Leon R. Yankwich, Judge of the Superior Court, Los Angeles County

"Individualization is the root of adequate penal treatment."

Thus writes the National Commission on Law Enforcement (known popularly as the Wickersham Commission), in its report on penal institutions. It seems strange that the attitude epitomized in the sentence just quoted should need emphasis in this day and age. One would think that, after all the thinking and writing on the subject of criminology and penology which has followed since *Beccaria's* famous *Dei Delitti i Penni,* in the late eighteenth century, this approach to the problem would be received without question. But it is not. The modern methods of dealing with the problem are attacked constantly as "sentimental," as "a coddling" of criminals. Parole, probation, the indeterminate sentence, and other fruits of modern penology in California and elsewhere,—which embody the idea of individualization of punishment are constantly under attack. The policeman and prosecutor's points of view are overemphasized. And there is a demand for the return to the conception of justice as a feelingless machine, moving relentlessly towards the destruction of him who is caught in its toils,—the machine which John *Galsworthy* depicted in his play, "Justice."

The Solution

Because of this it needs be stressed that the solution of the criminal problem lies in certainty of apprehension and quickness and certainty of conviction. It *does not* lie in more stringent laws, or in the tightening of the reins of criminal prosecution, at the expense of fundamental rights. As Dean *Orin K. McMurray* of the school of jurisprudence of the University of California, said some years ago before the *California Bar Association*:

> "The danger is that crude thinking based on false assumptions, may be enacted into legislation, and may impair the guarantees of orderly legal procedure that are at the basis of our liberty.
>
> "The duty devolves upon the bar of upholding in the face of criticism and against the temporary majority the fundamental principles on which our legal system is founded and for which, indeed, organized society exists." (*Proceedings XVI* Annual Convention (1925), p. 91.)

The object of the old school of criminology was to destroy crime by severe punishments. How it failed to accomplish its purpose, has been eloquently stated by the author of the Missouri Crime Survey (*Guy H. Thompson*):

> "Vengeance toward criminals should not impel us to measures that are extreme. Neither should fear blot out the recollections or the lessons of history. Ever since creation's peaceful dawn was startled by the death cry of the murdered Abel and Jehovah placed his mark upon Cain and sent him forth a 'fugitive and a vagabond,' cursed from the earth that had opened its mouth to receive his brother's blood from his hand, there has been a never-ending conflict between those who make the laws and those who break them. Nothing has afforded such harrowing and conclusive evidence of man's inhumanity to man as has this age-long struggle. It has meant the rack and the stake, banishment and bondage, the Bastile and the Tower, the mines of Siberia and the dungeons of the Doges. With refinements of torture that have taxed the cruel ingenuity of man, it has claimed as its unhappy victims in every age and every race, the prince and the peasant, the noble and the nobody, the king and the subject, the savage and the saint. Still crime persisted. Indeed, never was it so flourishing as when torture was most barbarous and punishment most severe.
>
> "Juries will not convict if verdicts of guilty will mean excessive punishments. . . . What we need is certainty and not severity of punishment; the *judicious application of mercy and not its elimination.*"

The barbarous spirit of the criminal law of the sixteenth, seventeenth and eighteenth century, all over Europe, has been summarized by *Preserved Smith* in his "History of Modern Culture." I quote from it:

> "Compared with the treatment of criminals both in the Middle Ages and in very recent times the justice of the sixteenth, seventeenth and eighteenth centuries was distinguished by its savage cruelty. Torture was used both in extracting confes-

sion and in punishment. The prisons were hells on earth; punishments were frightful. Scourging, mutilation, blinding, racking, burning and boiling made the punishment of even minor offences worse than simple death; and when death was inflicted it was often made as painful as possible. In order to strike terror in the populace, execution and torture were made public spectacles. Public opinion approved this cruelty, and even gloated over the gruesome sight of it. When Ravaillac, for regicide, was plied with red hot pincers, and then pulled limb from limb by wild horses, a vast crowd shouted its ferocious joy, and threatened to lynch the priest who, by absolving him, would have delivered his soul from hell.

"Under the ancient German codes most crimes were punished by fines; and nowadays all but murder and treason are punished by prison or fine. But in the age of transition death was inflicted, in a gradation of painful forms, for a large number of felonies. Among capital crimes were homicide, *lese majeste*, heresy, sorcery, sacrilege, theft, counterfeiting, smuggling, falsifying weights and measures, refusal to take up a public service, adulteration of food, perjury, various sexual offences, damage to property by night, arson, breaking prison, removing landmarks, and attempting suicide.

"The chief reason for the ferocity of the penalties was *the weakness of the machinery of justice*. It is generally true that *a strong government is a mild one*, and *that a weak administration of the laws tries to make up for its inefficiency by its cruelty*. Punishments, like betting odds, are weighted in inverse proportion to the probabilities of loss."

It is common knowledge that this system failed to achieve the desired result.

"Deterrence," writes *Harry Elmer Barnes*, "is *never adequate and never in proportion to the severity of the punishment*. History affords ample proof of this. England had far more crime per capita one hundred and fifty years ago, when there were two hundred capital crimes, than she has today with her mild criminal code. A death sentence for the contraction of typhoid fever would doubtless reduce the volume of the disease. But it is far more effective to clear up the polluted water supply and get in good doctors to treat active cases. *Scientific prevention and treatment of crime will do much more to reduce criminality than severe punishments.*" (*The Outlook and Independent*, vol. 158, No. 9, pages 273-274; July 1, 1931.)

Orderly Legal Procedure

The development of orderly legal procedure in criminal cases has been a long travail, and is a product of advanced civilization. The law of the mob,—lynch law, the law of the vigilante,—may achieve results, *in particular cases*, more quickly. But as we emerge from crudity into a fuller social life,—the orderly process of law as a means of settling conflicts between individuals or between individuals and the commonwealth, takes their place. Adherence to the rule of law is the chief aim of our legal system. If there be many instances of failure, it is merely because we are administering *human* law through *human* (and often weak) instrumentalities.

To those who yearn for a momentary efficiency which would disregard these principles and ideals, the answer of history is in the facts just given and in the following pithy statement by *Zechariah Chaffee, Jr.*:

> "Charles I wanted taxes without Parliament and the Star Chamber was instituted to suppress crime without a jury. The increased efficiency thereby secured was not adequately appreciated by the people at large."

Any modern movement in the same direction will, as likely, fail.

The only just aim of punishment as the Italian Criminologist *R. Garofalo* has pointed out, is to disarm the enemy of society—and it is successful only when it is individualized and is applied *not to the crime but to the criminal. "Punishment to fit the criminal,"* is the aim of modern penology. The final solution of the problem of crime is bound up with the solution of the problem of civilization itself. In the meantime, however, it is well to remain within the bounds of sanity. It is well not to mistake *"waves of crime news"* for *"waves of crime,"* and to realize that it is more important that those rights which are established for the benefit of a person accused of crime, be protected than that speedy and severe punishments be inflicted at the expense of those rights. There is greater social safety in having our courts secure to persons accused of crime those rights which were the boast of the common law,—than in having

them mete out—under the big-stick of coercive public opinion—severe penalties.

Justice Aim of the Law

And in the administration of the penalties of the law,—the policy to be followed is that which lays stress upon the aim of our judicial system to achieve *justice under the law.* This ideal is as old as civilized society itself. It was the boast of Hammurabi, in his famous Code, that he had established "law and justice." Of course, neither he, nor we have achieved it in full. But so long as we aim towards it as an ideal, there is hope. For, law may be the expression of the temporary whim of a legislator; order may be based upon iniquity. Only when justice is the aim of law, and the basis of order, do we achieve the true end of distributive justice,—which is to give everyone his due.

If we do not achieve it, there is yet nobility in the attempt.

NOTE:

Judge Yankwich's article, written before the publication of the report of the committee of the Los Angeles Bar Association, outlining a plan of Scientific Penology,—gives some of the historical background of the problem. The committee's report makes specific recommendations. THE BULLETIN asked Judge Yankwich to comment on the report, or to add to the article and he authorized the following statement:

"While it may flatter the ego of a judge to *'look a prisoner in the eye and tell him to go to'* the penitentiary for a definite number of years, all thinking students concede that the ideal system would be one which left to courts the *determination of guilt merely,* leaving to a socially and scientifically trained body the determination of the quantum of punishment to be applied to each individual. This, of course, goes contrary to the idea of *'democracy in crime,'* which many have and which they interpret as requiring the same punishments for all who commit the same crime. But such democracy in crime *did not,* in realty, *exist* even in the days of determinate sentences, because judges differed in the application of punishment and there was no consistency even in the same judge. The report of the committee accords with the legislative recommendation made by Governor *Alfred E. Smith* of New York and is in line with the best thought on the subject."

The Junior Bar Committee

ELECTS OFFICERS FOR 1932

The new Chairman of the Junior Committee of the Los Angeles Bar Association is Lowell Matthay, who succeeds Leo E. Anderson. He was elected at the February meeting of the Committee.

Other officers elected are:

Michael Bilz, *First Vice-Chairman*

J. W. Mullin, Jr., *Second Vice-Chairman*

Augustus F. Mack, Jr., re-elected *Secretary*.

At the meeting H. Sidney Laughlin, a member of the Executive Council of the group, expressed to Chairman Anderson the Appreciation of the Junior Committee for his able leadership of the Committee through an active, interesting and progressive year.

Chairman Matthay has announced the members of the Executive Council, for this year, as follows:

Leo E. Anderson
Lewis W. Andrews, Jr.
Jackson W. Chance
Kenneth N. Chantry
Grant B. Cooper
M. Philip Davis
Frank H. Ferguson
John J. Ford
Arthur E. Freston
W. I. Gilbert, Jr.
Jack W. Hardy
Daniel Gaines Hon.
William Larrabee
H. Sidney Laughlin
F. Barclay Leeds
Neil G. Locke
Robt. E. Paradise
Wm. M. Rains
Donald E. Ruppe
Herman F. Selvin
Jerold E. Weil
Theodore Wiseman
Carleton B. Wood

This group is composed of graduates from California law schools and from schools in the East and Middle West, who have been admitted to practice since 1925.

At the first meeting of the Executive Council which was a breakfast at the University Club, committees were appointed to take charge of some of the activities of the group.

Jack W. Hardy, energetic member of the Executive Council, will be Chairman of the Committee on Meetings. He will be assisted by M. Philip Davis, H. Sidney Laughlin and Herman F. Selvin.

Under the direction of Augustus F. Mack, Jr., a committee having as its members Jackson W. Chance, Donald E. Ruppe and Theodore Wiseman, will endeavor to increase the membership of the Los Angeles Bar Association by contacting young attorneys admitted to practice during the past seven years.

To manage the important work of securing the return of the Economic Survey questionnaires of the State Bar of California, Chairman Matthay selected Neil G. Locke, as Chairman, and Jerold E. Weil and J. W. Mullin, Jr., as a committee to handle this work in Los Angeles County. It is believed that the real worth of the survey is dependent on a high percentage of the returns of the questionnaire. The Junior Bars of San Francisco and Los Angeles are pushing this work and request that all attorneys who have received the questionnaire fill it out and return it immediately to the State Bar office.

BAR COMMITTEE'S REPORT GETS NATIONAL PUBLICITY

The report of the Committee on Criminal Law and Procedure, presenting a "Plan of Scientific Penology," received wide publicity in the newspapers of the country. Due to the arrangement of THE BULLETIN Committee, the Associated Press sent out a complete digest of the report which was printed in the newspapers throughout the United States. As a result there have been many requests for THE BULLETIN containing the report.

Arbitration Committee Makes Report

OPPORTUNITIES FOR SETTLEMENT OF DISPUTES NOT TAKEN FULL ADVANTAGE OF BY LAWYERS AND LAYMEN

COMMITTEE ON ARBITRATION

The Committee on Arbitration shall consist of nine (9) members or such other number as the President may from time to time provide. It shall be the function of the Committee, or any section thereof, to act as arbitrators of disputes or differences between attorneys, or between client and attorney, relative to (a) professional conduct, (b) breach of the code of ethics, (c) the amount, division or payment of fees, to the end that such disputes may be arbitrated and settled without publicity and without recourse to the courts.

The Committee shall make its own rules of procedure, and may provide for an arbitration or hearing by or before one or more members of the committee. The Committee shall conduct its proceedings as informally and expeditiously as it shall deem consistent with the rights of those whose interest are involved. (By-Laws)

To the Board of Trustees:

The Report of the Arbitration Committee of the Association for the year 1931 is herewith respectfully submitted.

The full Committee met shortly after its appointment and organized itself into three Departments, as follows:

DEPARTMENT 1

Earl S. Patterson, *Chairman*
Don G. Bowker Alex W. Davis

DEPARTMENT 2

Pierce Works, *Chairman*
Fred Aberle, Jr. L. M. Chapman

DEPARTMENT 3

Paul Vallee, *Chairman*
John G. Clark Ovila N. Normandin
Eugene Craven, *Secretary*

The Rules and Regulations and the Forms adopted by the Committee of 1930 were given considerable study and thereafter were adopted by this Committee en toto. Since that time each Department has zealously devoted itself to the work assigned to it by the Secretary. The problems that have arisen have been easily disposed of by conferences and correspondence so that no further general meetings have been required.

Secretary Craven has proven of invaluable assistance to the various Departments and to the Chairman. By acting as Clerk for all the Departments he has relieved the Chairman of most of the detail work and has aided the Committee as a whole to function smoothly.

A statistical report of the Committee's activities follows:

Total cases pending at beginning of year	5
Total cases filed during the year	26
Total cases dismissed upon recommendation of committee member	5
Total cases dismissed for failure of party to sign arbitration agreement	8
Total cases dismissed for failure of Complainant to prosecute	2
Total cases dismissed upon compromise	1
Total cases heard but in which formal awards have not been filed	1
Total cases in which formal awards have been filed	10
Total cases pending	5

A comparison with the work of the 1930 Committee discloses that the number of cases filed in each year are about equal in number, but that more cases were disposed of during this year than during 1930. The fact that there has been no increase in the number of cases filed has been somewhat disappointing. This Committee feels, as did the 1930 Committee, that neither lawyers nor laymen take full advantage of the opportunity which the existence of this Committee offers, for the settlement of disputes to the interest of both parties, with a minimum loss of time and with no expense.

The Committee respectfully suggests that every effort be made to publicize the existence and the nature of the work of the Committee so that laymen as well as lawyers will be sufficiently informed so as to take advantage of its existence.

It has been suggested by one member of the Committee that the work would be expedited if counsel was assigned to assist layment when they appear as parties. This is a suggestion worthy of thought and should be passed on to the new Committee for its consideration.

In closing, the Chairman wishes to compliment the individual members of the Committee for the great amount of time they have given so freely and excellent results they have accomplished.

JOSEPH W. VICKERS,
Chairman.

What Other Bar Associations are Doing

INDIANA: The Committee on Reorganization of the Indiana State Bar Association has tendered a proposed bill for an Indiana State Bar Act modeled largely after the California Act and following as nearly as may be the exact text of the California Act.

A movement to establish a permanent endowment for the Indiana Law Journal "in order to make it a more serviceable organ of the Indiana Bar Association" was set out in a report of a special committee. The plan contemplates as means of raising an endowment fund: (1) Sale of life subscriptions to the *Law Journal;* (2) gifts, either presents or by way of devises in wills from members of the bar, and (3) income from advertising. (Indiana Law Journal)

PENNSYLVANIA: The Lackawanna Bar Association, which is the bar association of Lackawanna County, Pennsylvania, whose success in bringing up to date a trial calendar that was two years behind, has been widely commented upon in bar publications, (including THE BULLETIN) owns and prints a weekly paper called the "Lackawanna Juris." The receipts from this paper, says President W. J. Fitzgerald, in the *Journal of the American Judicature Society,* "are the main income of the association and exceed its entire expenditures."

TEXAS: The young lawyers of Texas organized the Junior Bar Association in 1931 because "they felt they were outsiders in bar organization, ignored as to membership in local, state, and national organizations; that they were not encouraged in active participation in bar work and were not elected to office."

That the motives of the younger group were appreciated by the older association members is apparent from the sweeping changes in organization which were effected in the Texas Bar Association. Revision of the constitution and by-laws was had. "The result was a breaking of lock-step promotion to office, a movement to create distinct associations with representation in the association, and the creation of a Junior Bar section. * * * There are believed to be 10,000 lawyers in Texas and their number is increasing rapidly." (Journal of American Judicature Society)

ILLINOIS: The Chicago Bar Association's Committee on the Judiciary has prepared a draft of a proposed Consolidated Civil Practice Act, which the State Bar Association's Committee on Judicial Administration is submitting for the consideration of members of the bar of the entire state. (Chicago Bar Association Record)

OHIO: The Cleveland Bar Association *Journal* reports that the objectionable practices which were engaged in by the banks, such as preparing legal documents (other than wills and trust agreements) and the giving of legal advice, have been discontinued by the banks and trust companies. They no longer advertise to perform such services, but, on the contrary, insert in their general advertising, such statements as: "Consult with your attorney and bring him with you to discuss the matter with one of our trust officers."

MISSOURI: Incorporation of the Bar is receiving earnest attention in Missouri, according to the *Missouri Bar Journal,* the plan being in the hands of a committee. The members of the bar throughout the state are taking great interest in the work of the committee "for a more perfect union among the lawyers of Missouri."

KENTUCKY: A Bar Organization bill will be presented to the Kentucky Legislature at its 1932 session. President Conner of the State Bar urges all lawyers to support it, and declared, "at present there is no way to discipline a lawyer in Kentucky until he has become so bad that he is an open scandal to the community." (American Bar Association Journal)

SAN GABRIEL VALLEY BAR ASSOCIATION

The 1932 officers of the San Gabriel Valley Bar Association are as follows:

President, Franklin Padan; Vice-President, James B. Ogg; Secretary-Treasurer, Albert C. McCall. The office of the Secretary is 227 Edison Building, 317 West Main Street, Alhambra.

Bar Association Periodicals

INCREASE IN NUMBER AND IMPORTANCE

The effectiveness of a Bar Association is largely measured by the medium of publicity through which its work is communicated to the members. There are 36 state and local bar association periodicals now being published, and the number is increasing.

The American Bar Association recently sent out a questionnaire to all state Bar Associations to ascertain the number of such publications, and the Missouri State Bar Journal has suggested a reciprocal subscription arrangement in order to bring the bar organizations into closer touch and to enable the editors to learn what other journals are advocating and what other associations are doing. The Los Angeles Bar Association BULLETIN has been placed on the mailing list of the 36 Bar publications herein listed, and in turn is receiving the others.

"As a rule the reading matter in these Journals," says the Missouri Bar Journal's editor, "is more newsy and less weighty than is usually found in law review. Long and scholarly articles give way to personals and local items. Reviews or digests of recent decisions are frequently found. Publicity is given to the current activities of the bar, membership is promoted, and the legislative program and other objectives of the local association, are sponsored."

"The list of such publications to which has been added three national periodicals, and noted the number of issues a year where known, is as follows:

CALIFORNIA: The State Bar Journal, San Francisco, Calif., monthly; Los Angeles Bar Association Bulletin, Los Angeles, Calif., monthly.

COLORADO: The Dicta, Denver Bar Association, Denver, Colorado, monthly.

CONNECTICUT: Connecticut Bar Journal, Stamford, Conn., quarterly; New Haven County Bar Bulletin, New Haven, Conn.

FLORIDA: Florida State Bar Association Law Journal, Lakeland, Florida.

GEORGIA: The Georgia Lawyer, Macon, Ga., monthly.

IOWA: Iowa State Bar Association Quarterly, Des Moines, Iowa, quarterly.

ILLINOIS: Illinois Bar Journal, Springfield, Ill., quarterly; Chicago Bar Association Record, Chicago, Ill., monthly.

IDAHO: Idaho Law Journal, Moscow, Idaho, quarterly.

INDIANA: Indiana Law Journal, Bloomington, Indiana, monthly.

MASSACHUSETTS: The Boston Bar Bulletin, Boston, Mass., 6 times yearly; Massachusetts Law Quarterly, Boston, Mass., quarterly.

MICHIGAN: Michigan State Bar Journal, Ann Arbor, Mich., monthly; The Detroit Bar Quarterly, Detroit, Mich., quarterly.

MINNESOTA: Bench and Bar of Minnesota, St. Paul, Minn., 4 times yearly.

MISSOURI: Missouri Bar Journal, Kansas City, Mo., monthly; Kansas City Bar Bulletin, Kansas City, Mo., monthly.

MISSISSIPPI: Mississippi Law Journal, University, Mississippi, quarterly.

NEBRASKA: Nebraska Law Bulletin, Lincoln, Nebr., quarterly.

NEW YORK: New York State Bar Association Bulletin, Albany, N. Y., monthly; Periodicals of the Association of the Bar of the City of New York, New York City; Queens County Bar News, Jamaica, N. Y.

NORTH DAKOTA: Bar Briefs, Bismarck, N. D., monthly.

OHIO: The Ohio Bar Association Report, Columbus, Ohio, weekly; The Journal of the Cleveland Bar Association, Cleveland, Ohio, monthly.

OKLAHOMA: Oklahoma State Bar Journal, Oklahoma City, Okla., monthly.

PENNSYLVANIA: Pennsylvania Bar Association Quarterly, Philadelphia, Pa., quarterly.

TENNESSEE: Tennessee Law Review, Knoxville, Tenn., quarterly.

TEXAS: The Texas Law Review, Austin, Texas, 5 times yearly; Houston Bar Journal, Houston, Texas.

UTAH: Utah Bar Bulletin, Salt Lake City, Utah, monthly.

VIRGINIA: Virginia Law Digest, Richmond, Va.

WEST VIRGINIA: The West Virginia Law Quarterly, Morgantown, West Virginia, quarterly.

WISCONSIN: Wisconsin State Bar Bulletin, Madison, Wis., monthly; National: American Bar Association Journal, Chicago, Ill., monthly; The Journal of the American Judicature Society, Ann Arbor, Mich., monthly; Commercial Law Journal, Chicago, Ill., monthly.

The County Law Library

COMMITTEE OF BAR ASSOCIATION MAKES COMPREHENSIVE REPORT. GROWTH, CONDITION AND COSTS DISCUSSED

The County Law Library contains 95,000 volumes, strictly limited to the field of the law. It covers the laws and decisions of every state in the union, as well as the laws and reports of every English-speaking nation of the world. It provides the eighty courts of record of this County with almost every recognized authority and precedent. Every lawyer in the County should feel a sense of pride in the institution.

Such are the statements of the Library Committee of the Los Angeles Bar Association.

This committee consisting of Henry O. Wheeler, Henry Herzbrun, Thomas A. J. Dockweiler, Lawrence L. Otis and T. W. Robinson has made a very comprehensive report to the Board of Trustees. The report contains much statistical matter, which the BULLETIN cannot, due to lack of space, print in full. The comments of the Committee and its recommendations are, in part, as follows:

A survey of law libraries in the City of Los Angeles reveals the fact that there are very few large law libraries maintained in this City. The Bar Association has no law library of its own.

The sudden increase in the population of our City and County has brought to us, citizens from every state and county of the United States, and these have brought with them their legal problems and interests. To meet the ever present demand for the laws and decisions of these various states requires a library of such magnitude that the establishment and upkeep is becoming too great a burden to be assumed by the individual lawyer.

This Committee has considered the mounting cost of the reports of the decisions of the various states, and, after careful study, we believe that California is being furnished the reports of its decisions as cheaply as any other state in the Union, and, at the present time, as expeditiously as in most of the states. A table has been made showing the costs of reports inside and outside of the State in every state of the Union. On this report we may state the prices of reports throughout the United States run from $2.50 a volume within the State to $12.00 a volume, and the tendency of the present day is to increase the price of volumes of reports, where delivered outside of the State.

Supreme and Appellate Courts Reports

At present reports of decisions of the State of California are furnished by the Bancroft Whitney Company, under contract made with the State of California, at the price of $2.85 delivered. The volumes contain an average of about 900 pages. The reports of the Supreme Court are well up to date, being practically within six months; the reports of the Appellate Court decisions are practically within one year of date, which is a great improvement over the conditions which existed in this State three or four years ago.

With regard to obtaining advance reports on the decisions rendered by our Supreme and Appellate Courts, we find many difficulties arising from the practice in this State of granting re-hearings, both in the Appellate and Supreme Courts.

Advance Sheets

The legal profession at present is dependent for advance information upon the advance pamphlets of the Pacific Reporter and the California Appellate decisions and California decisions, which last two sets are published semi-weekly by the Recorder Printing and Publishing Company, of San Francisco, California, at the separate price of $21.00 per year, or $36.00 for a combination subscription to both publications. The decisions are published from ten days to two weeks after filing, but the paging does not in any way agree with the pagination of the official reports. This discrepancy cannot be avoided under our practice, where often re-hearings are granted and the original decision is reversed and never given official publication.

The decisions of the Appellate Department of the Superior Court have now appeared in advance form and are perpetuated as a supplement in the California Appellate Reports, beginning with Volume 106 thereof.

Special Committee Recommended

We recommend that a special committee on law reporting be appointed to work in conjunction with the State Bar Association, in an effort to improve, if possible, the ad-

vance sheet information of the decisions of this State, so that the paging will correspond to the permanent volume.

The high cost of material and labor during the past few years has led, as noted, to a general increase in the price of reports, which may have been justified; but the lawyer is also vitally interested in the condition of the binding of his text books and reports, and we note, with alarm, the general deterioration in the binding of most of the reports, and especially, the text books, which have been produced in the United States in the last few years. This condition is more noted in certain states and by certain publishers than elsewhere. The lawyers should protect their interests and scrutinize the condition of the binding of the volumes for which they are at present paying substantial prices.

There are but few privately owned libraries in our City of any considerable size, and the use of these is, of course, confined to the individual firms to which they belong. In our colleges, we are glad to note a healthy growth in the law libraries of the various institutions, and desire to call the attention of our members to these collegiate law libraries and urge that they be given all help and encouragement possible by our profession. The Law Department of the University of Southern California has accumulated a very creditable collection of over 40,000 volumes. The Loyola College of Law now has 10,000 volumes; the Southwestern College of Law has 3,000 volumes.

District Court Library

We appreciate the provision which the State has made for the District Court of Appeals, whose Library now contains about 12,000 volumes, and a new departure has been made in the United States Federal District Court, whereby they have accumulated a working library of approximately 300 volumes.

We regret that no provision has as yet been made for a law library to be established at the University of California at Los Angeles, although we are pleased to note that the professors and students engaged in pre-legal work are taking an active interest and beginning the accumulation of a law library in that institution. We heartily recommend that the legal profession take an interest in and assist them in the work.

While the Los Angeles Bar Association has no library of its own, yet its members, as well as all the members of the legal profession in this County, are well provided for by the County Law Library, which was established by members of the Bar of Los Angeles in 1886. The Library was turned over to the County, upon the adoption of the Law Library law in 1891.

Growth of County Library

Under the careful management of successive Boards of Trustees, this Law Library, during the past forty years, has grown in the number of volumes and wealth of material until, at present, it ranks among the first of the great law libraries of the United States. Its present Board of Trustees consists of the following members:

Mr. Wm. J. Hunsaker, *President*
Hon. Albert Lee Stephens
Hon. Hartley Shaw
Hon. Edwin F. Hahn
Hon. Henry W. Wright.

95,000 Volumes

The County Law Library at present contains nearly 95,000 volumes, strictly limited to the field of law. It covers the laws and decisions of every state in the Union, as well as the laws and reports of every English-speaking nation of the world, and provides the eighty courts of record of this County with almost every recognized authority and precedent. It is complete in legal text reference work and legal periodicals and contains many volumes of historical material.

A branch is maintained in the Jergins Trust Company Building, Long Beach, for the use of Courts in that City.

The collection of material in the County Law Library, which has extended for a period of over forty years, contains material which it would be extremely difficult to replace. The laws and decisions of all foreign countries are well provided for in this library and kept up to date.

Every lawyer in our County should feel a pride in this institution, and the profession at large should assume the duty of seeing that the same is properly housed and protected, as it, undoubtedly, is an object of civic pride and a source of great aid in the administration of justice, as well as contributory to the cultural life of our City and County.

While the Board of Supervisors has furnished quarters, as provided by law, and for which the members of the legal profession should be truly appreciative, yet it is apodeictic that this institution is worthy of a permanent home comparable to its value and size.

Regular and Special Committees Los Angeles Bar Association 1932-1933

(Other committees will be appointed at a later date.)

Committee on Arbitration

Earl Sheldon Patterson, *Chairman*
Don G. Bowker, *Vice-Chairman*
William Eugene Craven, *Secretary*

Fred Aberle, Jr. — Alex W. Davis
Lorrin Andrews — Ovila N. Normandin
L. M. Chapman — Ray E. Nimmo
John G. Clark — Newton M. Todd

Budget & Finance Committee

T. W. Robinson, *Chairman*
Joe Crider, Jr. — Earle M. Daniels

Bulletin Committee

Birney Donnell, *Chairman*
Albert E. Marks — A. A. McDowell
Chas. R .Baird — Lowell Matthay
Ewell D. Moore

Committee on Criminal Law and Procedure

Byron C. Hanna, *Chairman*
Edward L. H. Bissinger, *Secretary*
Philbrick McCoy — Thomas P. White
Phil S. Gibson — Daniel Beecher, Hon.
Percy V. Hammon — Thos. L. Ambrose, Hon.
William LaPlante — Chas. W. Fricke, Hon.
Tracy Chatfield Becker

Committee on Constitutional Amendments

Shepard Mitchell, *Chairman*
Edward E. Bacon — Jacob J. Lieberman
Wm. A. Bowen — Rollin L. McNitt
Thos. A. J. Dockweiler — C. Elvon Musick
Paul Fussell — Everett H. Smith
Richard C. Godspeed — Howard W. Wright

Constitutional Rights Main Committee

Joseph L. Lewinson, *Chairman*
Lowell Matthay, *Secretary*
W. H. Anderson — Frank P. Doherty
Edgar W. Camp — Arvin B. Shaw, Jr.
Moye W. Stephens — Leonard B. Slosson
J. C. MacFarland — Kenyon F. Lee
Hubert T. Morrow — A. G. Ritter
Fred W. Morrison — Nathan Newby
Oscar Lawler — S. B. Robinson
Irving M. Walker — Walter Burke
John Beardsley — Zach Lamar Cobb
Henry F. Prince

Constitutional Rights Committee Advisory Board

John W. Hart — Joseph Scott
Gurney E. Newlin — E. A. Meserve
R. J. Dillon — Jefferson P. Chandler
Frank G. Finlayson

Constitutional Rights Auxiliary Committee

F. Walton Brown, *Chairman*
Lewis M. Andrews — Henry I. Dockweiler
Manley C. Davidson — J. D. Fredericks, Jr.
Augustus F. Mack, Jr. — Chas. E. Cook, Jr.
Stevens Fargo — Michael Bilz
Frank H. Ferguson — Neil G. Locke
Jack W. Hardy — David Johnson
Daniel Gaines, Hon.

Committee on Court Proceedings

Allen W. Ashburn, *Chairman*
Ralph H. Blum — Allen G. Ritter
Louis J. Euler — George W. Prince, Jr.
Henry L. Knoop — Clyde C. Shoemaker
J. Karl Lobdell — Marshall Stimson
Arlo D. Poe

Committee on Co-ordination of Committee Work

Gabriel C. Duque, *Chairman*
John D. Richer, *Secretary*
Earl E. Johnson — William W. Clary
P. B. Plumb — E. E. Bacon
Henry F. Prince — M. I. Church

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The Stockholders' Liability Problem

EFFECT OF REPEAL OF SECTIONS OF CONSTITUTION AND SECTION 322 OF CIVIL CODE

By Rufus Bailey of the Los Angeles Bar

Since the repeal of sections 2 and 3 of Article XII of the State Constitution and section 322 of the Civil Code, much has been written and said concerning the present status of pending litigation to enforce stockholders' liability in California, and the retroactive effect of the repeal of these Constitutional and Legislative enactments.

Those seeking to maintain their several actions for the recovery on stockholders' liability, contend that their position is supported by either of two fundamental principles:

First: The liability of stockholders is contractural in its nature and the stockholders become liable to the creditors of the corporation as original debtors and any repeal which affects their right of recovery impairs the obligation of the contract and is therefore unconstitutional and void.

Second: Section 322 of the Civil Code was not impliedly repealed by the constitutional amendment to Article XII, section 3 of November, 1930.

I.

Liability of Stockholder Contractural in Nature

In *Aronson & Co. vs. Pearson,* 199 Cal. 286, p. 290, the Court said:

> "By accepting ownership of stock in a corporation, the stockholder in effect offers to make payment, to the extent of his stockholder's liability, to any person who may extend credit to the corporation during the period of his ownership. Whenever, during such ownership any person so extends credit to the corporation, 'the offer and the act (of extending credit) combined make a complete contract' between the stockholder and the creditor."

In *Harrison vs. Remington,* 140 Fed. 385 at 389 the Court said:

> "The basis of the stockholder's liability and of the action to enforce it is his contract to pay the debts of the corporation. The Constitution, the statutes under which the corporation is organized, and the established rules of law in force when he becomes a stockholder, are read into and become a part of his contract. By his subscription for the stock, or by his receipt and acceptance of it, he solemnly agrees, in consideration of the benefits derived from its ownership, that he will faithfully perform the obligations and discharge the duties imposed upon a stockholder by the Constitution, the statutes, and the law. When the defendant in this case took his stock, therefore, he made a contract with the Topeka Company and its creditors under the Constitution of Kansas and sections 1200 and 1204, which were then in force, that whenever that corporation suspended business for more than one year he would pay the debts of the corporation which were then existing to an amount not exceeding the par value of his stock."

To the same effect see:

Dennis vs. Superior Court, 91 Cal. 548
Kennedy vs. California Bank, 97 Cal. 93
Ellsworth vs. Bradford, 186 Cal. 316
Whittier vs. Visscher, 189 Cal. 450

II.

Since the Liability of a Stockholder is Contractural, That Contract is Protected Against any Impairment by Legislature or Constitutional Enactment

Laws impairing the obligations of contracts are expressly prohibited by section 16 Article II of the California Constitution, by section 10 Article I of the United States Constitution and by the provisions of the California Constitution section 3 of Article I, which provides that the Federal Constitution shall be the supreme law of the land.

Stockholders' liability being contractural in its nature, cannot be divested in so far as the liability which had accrued at the date of the repeal of the various enactments. To give the various repeals such effect would do violence to those provisions of both State and Federal Constitutions which forbid impairment of the obligation on contracts.

In *Ede vs. Knight,* 93 Cal., p. 161, it is said:

> "A valid contract cannot be abrogated by the adoption of a new constitution,

any more than it can be by the enactment of a law by the legislature. (Citing cases) *McDonald vs. Patterson,* 54 Cal. 267 is not in point."

In *Harrison vs. Remington,* 140 Fed. p. 392, it is said:

"A more extended review of the authorities upon this question would not be profitable. A thoughtful consideration of the issue and a careful examination of the decisions have convinced that the true rule, the rule sustained by reason and established by authority, is this: The remedies provided in a state for the enforcement of a contract when it is made are a part of the obligation of the contract. Any repeal or change of any of these remedies which substantially obstructs or retards the enforcement, or lessens the value of the agreement, impairs its obligations, and is unconstitutional and void."

To the same effect see:

Ochiltree vs. Ry. Co., 88 U. S. 249; 22 L.ed. 546

Bernheimer vs. Converse, 206 U. S. 516

Harrison vs. Remington, supra

Blackburn vs. Irvine, 205 Fed. 217

Hawthorne vs. Calef, 69 U. S. 10; 17 L.ed. 776

Shipman vs. Treadwell, 131 N. Y. S. 67

While section 1 of Article XII of the Constitution of the state of California is a reservation of power to alter and repeal laws concerning corporations, that power must be exercised in accordance with the Constitution of the United States, and such reservation does not invest the people of a state with the power to impair the obligation of contracts between the stockholders and creditors of the corporation.

Railway vs. Wisconsin, 230 U. S. 491

Superior vs. City of Superior, 263 U. S. 125.

It is interesting to note that the constitutions of the states of Maine (*Hawthorne vs. Calef, supra*), Minnesota (*Bernheimer vs. Converse, supra*) Maryland (*Myers vs. Knickerbocker Trust, supra*), and Kansas (*Harrison vs. Remington, supra*), contained constitutional reservations of power at the time of the decision of the cases noted after each state which reservations of power are similar to section 1 of Article XII of the California Constitution. In spite of such a reservation the appellate courts uniformly held that such reservations could not be held to operate retroactively on then existing stockholder's liability.

III.

The Legislature has Power to Create and Enforce Stockholders' Liability Without Constitutional Provision Therefor.

It must be borne in mind that when section 3, Article XII of the Constitution was repealed on November 4, 1930, the people adopted the amendment to section 1 of Article XII which reads as follows:

"*Corporations to be formed under general laws.* The legislature shall have power, by general laws and not otherwise, to provide for the formation, organization and regulation of corporations and to prescribe their powers, rights, duties and liabilities and the powers, rights, duties and liabilities of their officers and stockholders or members. All laws now in force in this state concerning corporations and all laws that may be hereafter passed pursuant to this section may be altered from time to time or repealed."

The conclusion then becomes inescapable that section 1 of Article XII as amended in 1930 is a saving clause on the repeal of section 3 of Article XII. By this amendment legislature is expressly given the power to prescribe the liabilities of the stockholders. In other words, section 322 is authorized by the constitution and if now re-enacted by the legislature would be a valid exercise of the legislative power.

This power however, is subject to the same restriction as any other enactments—its acts must conform to the constitutional limitations. In *Western Union vs. Hopkins,* 160 Cal. at page 120 the Court said:

"In this connection, learned counsel claim that a right to revocation was reserved, basing their claim on the constitutional provision that all laws passed pursuant to the section providing for the formation of corporations may be altered from time to time or repealed (Const. of 1849, sec. 31, art. IV: Const. of 1879, sec. 1, art. XII), and on section 327 of the Political Code, providing that a statute may be repealed at any time except when otherwise provided therein, and that persons acting thereunder are deemed to have acted in contemplation of this power of repeal. The effect of similar provisions was learnedly discussed

by Justice Cooley in *City of Detroit vs. Detroit, Etc., Co.*, 43 Mich. 140, (5 N.W. 275), where it was sought, under express authority of an act of the legislature of the state, to deprive a plank road company of its right acquired under a prior statute to maintain a toll-gate within the existing corporate limits of the city of Detroit. It was there concluded that the effect would be to deprive the company of property lawfully acquired, and that there was no well considered case in which it had been held that a legislature, under the general power to amend a charter, might take from a corporation any of its substantial property or property rights. A distinction is made in the opinion between the cases involving the question of the liability of corporations to the control of the general police laws and cases involving acts passed solely in the exercise of the reserved general power to amend and repeal charters of corporations. Of course, the liability of plaintiff to all such reasonable regulations as is warranted in the proper exercise of the police power cannot be disputed. In fact this is expressly stipulated by the provisions in section 536 of the Civil Code, that the system of the telegraph company must be construed 'in such manner and at such points as not to incommode the public use of the road or highway.' But in so far as actual occupation of a highway by a telegraph company was taken or had under section 536 of the Civil Code, we are of the opinion that a vested right resulted, subject only to the proper exercise of the police power, and that it must be held that there was no such reservation as warranted such right being taken away without compensation."

No citation of authorities is necessary on the proposition that the state constitution is a limitation of power, not a grant. In other words legislature can pass all laws not prohibited. In this connection it is respectfully submitted that Article XII Section 3 of the Constitution was no more than a guaranty to the people of the state that there would be stockholders' liability so long as they continued that section in force as a part of the fundamental law. Its repeal was but a withdrawal of that guaranty. Section 322 Civil Code was in effect prior to the adoption of this constitution and continued in force until its repeal of August 14, 1931. The Constitution provided (Article XXII, Section 1) that all laws not inconsistent with is provisions shall *continue in force until altered or repealed by legislature.* In *Gardiner vs. Bank of Napa,* 160 Cal. 577 at page 586, the Court said:

> "Section 1, art. 22, referred to provides 'that all laws in force at the adoption of this constitution, not inconsistent therewith, shall remain in full force and effect until altered or repealed by the legislature.' If, therefore, the provisions of section 322 quoted are not inconsistent with the provisions of article 12, sec. 3, they are, in express terms, continued in force. As we have already seen, they are clearly not inconsistent, but in all respects in harmony. Under both, the stockholder is liable in the aggregate for his proportion of all debts and liabilities of the corporation contracted while he was a stockholder, and no more. The constitution does not provide how the liability shall be enforced whether against each stockholder separately, or all jointly, while the statute goes further, and does so provide for its enforcement, and that provision is not inconsistent with the provision of the constitution, but in the end it reaches the same result. *Larrabee v. Baldwin,* 35 Cal. 156, and other cases affirming it, established this point. Were section 322 to be formally re-enacted now by the legislature, would anybody pretend that it would be inconsistent with the constitutional provision now in question in such sense as to render it unconstitutional and void? I apprehend not. If it would not be inconsistent, and, therefore, unconstitutional, and void, if formally re-enacted, it cannot be inconsistent, and, therefore, repealed now. If it could stand with the constitution upon re-enactment, it can stand with it now. Not being inconsistent, as we have seen, it is in express terms continued in force."

To the same effect see:

In re *Stewart,* 53 Cal. 745
Ex Parte Burke, 59 Cal. 6

IV.

Liability of Directors and Liability of Stockholders are to be Distinguished

Eliminating from consideration for the moment the limitation in the United States Constitution against impairing the obligation of contracts, we need go no further than our own constitution and statutes to find a clear distinction between the liability of directors for misappropriations and em-

bezzlements and the liability of stockholders. The liability of directors depends entirely upon the constitutional provision.

O'Connell vs. Walker, 12 Cal. App. 694

It has been held that the provisions of the constitution creating the liability of directors (Article XII, section 3) is self executing.

Winchester vs. Howard, 136 Cal. 432.

Those who seek to have stockholders' liability extinguished by reason of the repeal of the constitutional provision lay great stress and depend almost entirely upon the language used in the case of *Coombs vs. Franklin,* 82 C.D. 103, 577, but it must be kept in mind that there was no statute in force which bore to that constitutional provision the same relationship which section 322 of the Civil Code bore to the constitutional provision guaranteeing a stockholder's liability. In other words when the constitutional provision concerning directors' liability was repealed there was no other constitutional or statutory provision continuing this liability. However, when the constitutional provision for stockholders' liability was repealed section 322 of the Civil Code was then in existence and operation and so continued until its repeal by the legislature which contained a saving clause.

It is of interest to note with reference to the construction of the several amendments concerning stockholders' liability that on the ballot proposing amendment to Section 1 and the repeal of Sections 2 and 3 of Article XII of the Constitution, it was stated that the amendment "Empowers Legislature by general laws to provide for the formation, organization and regulation of corporations, prescribe their powers, rights, duties and liabilities, and those of their officers, stockholders and members, and * * *"

The argument advanced on the ballot at the general election of November 4, 1930, contained the following language:

> "The purpose of this amendment is to empower the legislature to provide, and keep up to date, a modern system of laws for the organization and regulation of corporations, better adapted to present-day economic and social conditions than the antiquated laws we now have. Retaining the wise provision that the power may be exercised only by general laws, the amendment repeals certain sections that now prevent the legislature from enacting the sort of corporation laws we need."

Resort may be had to arguments submitted to voters with relation to the amendments proposed.

Tupman v. Haberkern, 208 Cal. 256

Nowhere in argument or statutes can a suggestion be found that the purpose or intent of the amendment and repeal was to destroy existing stockholders' liability. While on the contrary it is found that it was the plain purpose and intent to remove the constitutional guaranty that there must be stockholders' liability within the state of California thereby permitting Legislature to repeal section 322 of the Civil Code. This step was taken by Legislature and its amendment to section 322 continued pending causes of action and accrued rights of action by means of an express saving clause until such causes of action and accrued rights of administration expired under the Statute of Limitations.

I am in thorough sympathy with the kind of conservatism that refuses to rush into unconsidered reforms, and insists on thinking problems out before making changes; but lawyers, who should be leaders of public opinion in this work, cannot escape the responsibility for studying abuses and suggesting solutions, and are not justified in merely sitting back and picking flaws in proposed laws, without doing constructive work to find a remedy.

—John H. Lewis.

(From Journal of American Judicature Society)

OUT-OF-TOWN JUDGES HOLDING COURT HERE

H. B. Blakeley, Secretary of the Superior Court, announces the following out-of-town judges sitting in the local Superior Court, for the periods stated:

	TO	DEPT.
Mahon, K. S.		
Sutter County	....Jan. 30, 1932	15
Neville, Henry B.		
Sierra County	....June 30, 1932	28
Price, L. T.		
Alpine County	....June 30, 1932	46
Smith, J. A.		
Calaveras County	Jan. 30, 1932	16

TO THE MANY WHO HAVE WAITED:

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